

PROSECUTIONS BRIEF ON LEWIS RESENTENCING CASE

BRIEF IN SUPPORT OF THE PEOPLE'S MOTION TO IMPOSE A SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE UNDER MCL 769.25(4)(B)

NOW COME the People of the State of Michigan, by and through KYM WORTHY, the Wayne County Prosecuting Attorney, and ask this Honorable Court to grant their motion to sentence the Defendant to life without the possibility of parole for his First Degree Murder conviction.

APPLICABLE LAW

The United States Supreme Court has held that, absent an individualized hearing, imposing a sentence of "mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments.'" *Miller v Alabama*, 567 US 460, at 465 (2012). Subsequently, *Montgomery v Louisiana*, 577 US __; 136 S Ct 719, held that *Miller* applied retroactively to juvenile offenders whose convictions and sentences were final prior to the *Miller* decision.

1.

>In order to comply with the constitutional mandates set forth in *Miller*, the Michigan Legislature enacted MCL 769.25a. Pursuant to these statutes, if the People file a timely motion requesting a sentence of life imprisonment without the possibility of parole, as was done in this case, the court shall hold a hearing as part of the sentencing process. MCL 769.25a(4)(b) and MCL 769.25(6). "At the hearing, the trial court shall consider the factors listed in *Miller v Alabama* and may consider any other criteria relevant to its decision including the individual's record while incarcerated." MCL 769.25(6) (citations omitted). At the conclusion of the hearing, "the court shall specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing" MCL 769.25(7).

>Neither the statute or *Miller* requires that the court make a specific finding of fact or that the People prove a specific fact prior to the imposition of a sentence of life without the possibility of parole. "Indeed, there is language in *Montgomery* that suggest that the juvenile offender bears the burden of showing that life without parole is not the appropriate sentence by introducing mitigating evidence." *People v Skinner*, 502 Mich 89, 131 (2018). MCL 769.25 and *Miller* simply require that the sentencing court consider the factors enumerated in *Miller* as well as any other relevant criteria prior to deciding whether to sentence a juvenile offender to life in prison without the possibility of parole. Ultimately, the court's decision to impose life without the possibility of parole is not a factual finding, but a moral judgment which is based upon a careful and considered review of the *Miller* factors and any other relevant consideration. see *People v Skinner*, 502 Mich 89 (2018).

2.

>*Miller* held that prior to imposing a sentence upon a juvenile convicted of first degree murder, the sentencing court should consider the following:

>1. The Defendant's chronological age and its hallmark features; among them, immaturity, impetuosity, and failure to appreciate risks and consequences;

>2. The family and home environment that surround him--and from which he cannot usually extricate himself--no matter how brutal or dysfunctional;

>3. The circumstances of the homicide, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him;

>4. whether he might have been charged with and convicted of a lesser offense if not for incompetencies associated with youths--for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys; and

>5. The possibility of rehabilitation. *Miller*, at 477-478.

>Here, after consideration of the factors delineated in *Miller*, as well as other considerations, the People submit that a sentence of mandatory life without the possibility of parole is supported by the evidence and is an appropriate response to this Defendant's individualized circumstances and his criminal conduct.

DEFENDANT'S AGE

>The Defendant was born on May 13, 1959. At the time he murdered Mr. Gerald Swpitkowski, he was 17 years, 2 months and 18 days old.

FACTS OF THE OFFENSE Does not include any of the eyewitness statements from partner or others in street re: Lincoln Mark IV.

>In July 1976, the Defendant, Mark Kennedy, Jeffrey Mulligan and Ronald Pettway were all friends and were members of a gang named the Kilbourne Killer. What proof of any gang? The Defendant was 17 years old; Ronald Pettway and Mark Kennedy were 16 years old; and Jeffrey Mulligan was 15 years old. On the evening of July 30, 1976, the four young men meet at the corner of Glenfield and Barrett in the City of Detroit. They discussed what they would do that evening and decided to steal a car and drive around. The Defendant also suggested that they commit an armed robbery. Mr. Kennedy left and got the tools necessary to steal a car. The Defendant then stole a green Maverick. Mr. Kennedy drove the Maverick with the other three young men as passengers. A short time later, they saw a yellow Torino. Mr. Mulligan exited the Maverick and stole the Torino. The Defendant exited the Maverick and joined Mr. Mulligan in the Torino. Mr. Mulligan then drove off in the torino with the defendant in the front passenger seat. Mr. Kennedy followed the Torino in the Maverick with Mr. Pettway in the front passenger seat of the Maverick.

Around 1:30 am on July 31, 1976, the Defendant saw Mr. Raymond Cassabon delivering a pizza to a home in the vicinity of 7 Mile Road and Gratiot. The Defendant told Mr. Mulligan to stop the car. Mr. Mulligan parked the Torino in a parking lot near Mr. Cassabon's car. Both the Defendant and Mr. Mulligan exited the Torino. The Defendant approached Mr. Cassabon. Mr. Mulligan followed a short distance behind the Defendant. The Defendant possessed a single shot 12 gauge sawed off shotgun. When Mr. Kennedy saw the Torino stop, he also stopped. Mr. Kennedy parked the Maverick a short distance from Mr. Cassabon's car. Mr. Pettway exited the Maverick and got into the driver's seat of the Torino.

After delivering the pizza, Mr. Cassabon returned to his car. As Mr. Cassabon approached his car, he saw the Defendant. The Defendant pointed the sawed-off shotgun at Mr. Cassabon and stated "give me your fucking money." Mr. Cassabon froze with fear. Again, the Defendant stated "give me your fucking money." Mr. Cassabon still did not move. The Defendant then fired the shotgun at Mr. Cassabon. The shotgun blast forced Mr. Cassabon ten feet backwards and knocked him to the ground. during this assault, Mr. Mulligan stood a short distance behind the Defendant. When the Defendant pointed te shotgun at Mr. cassabon and demanded Mr. Cassabon's money, Mr. Mulligan shook with fear.

After the Defendant shot Mr. Cassabon, the Defendant and Mr. Mulligan returned to the Torino. Mr. Mulligan got behind the wheel of the Torino, Mr. Pettway slid over to the front passenger seat, and the Defendant got into the rear passenger seat. Mr. Mulligan drove off. As they were driving away, Mr. Pettway asked the Defendant what happened. The Defendant stated that "the guy wouldn't put his hands up."

Shortly after the Defendant shot Mr. Cassabon, Mr. Mulligan was driving south on Barrett in the City of Detroit. Mr. Kennedy was following in the Maverick. Mr. Mulligan turned eastbound on Harper. When they turned eastbound, they saw Gerald Swpitkowski staggering down the street. The Defendant told Mr. Mulligan to slow down. Pursuant to the Defendant's

order, Mr. Mulligan slowed down and slowly drove next to Mr. Swpitkowski. The Defendant pointed the sawed-off shot gun at Mr. Swpitkowski. The Defendant told Mr. Swpitkowski to give him his wallet. Mr. Swpitkowski initially did not respond. For a second time, the Defendant told Mr. Swpitkowski to give him his wallet. Mr. Swpitkowski reached towards his right rear pocket. At this time, the Defendant shot Mr. Swpitkowski in the face. The shotgun blast nearly blew the top of Mr. Swpitkowski's head off. The shotgun blast created a 4 inch in diameter hole in r. Swpitkowski's head. Pellets and wadding from the shotgun blast lodged in Mr. Swpitkowski's brain. Stippling from the blast covered Mr. Swpitkowski's face. The blast sent blood, skin and bone fragments flying. These fragments landed on the trunk lid and both the right and left rear quarter panels of the Torino Mr Swpitkowski died as a result of this shotgun blast.

After the Defendant shot and killed Mr. Swpitkowski, Mr. Mulligan continued to drive eastbound on Harper.

>Mr. Mulligan eventually dropped the Defendant off. Mr. Mulligan then ditched the Torino. Mr. Pettway disposed of the sawed-off shotgun.

PROCEDURAL HISTORY

On July 31, 1976, the Defendant murdered Gerald Swpitkowski on East Harper in the City of Detroit, Michigan. For this murder, the People charged the Defendant with one count of First Degree Murder. the Defendant's first trial on this charge began on March 9, 1977. On March 22, 1977, Judge Joseph Maher declared that the jury was hung, and he declared a mistrial. WHERE IS THE EVIDENCE FROM TRANSCRIPT. NO SUCH PROCEEDING RECORDED

EXCEPT IN CASE NOTES. Defendant's second trial began on July 5, 1977. On July 18, 1977, a jury found the Defendant guilty of First Degree Murder. On July 27, 1977, Judge Maher sentenced the Defendant to life without the possibility of parole for his First Degree Murder conviction.

CRIMINAL HISTORY

Juvenile Record

1. March 28 1974; Defendant was arrested on the charge of Possession of Stolen Property over \$100 for possession of a stolen machine gun. On October 2, 1974 the case **was dismissed for insufficient evidence.**
2. December 17, 1975; Defendant was arrested on the charges of Unlawfully Driving Away an Automobile and Possession of stolen property over \$100. **The petition was denied by the Juvenile Court.**
3. March 3, 1976: Defendant was arrested and charged with three separate counts of Robbery Not Armed. Defendant plead guilty to one of the counts, and the case was continued pending a probation report. On December 10, 1976, **the Robbery Not Armed case was dismissed without prejudice due to the Defendant being charged with first Degree Murder in the instant case.** **WHAT HAS THE INSTANT CASE GOT TO DO WITH 3/3/76 case?**

In 1977, the Defendant told the drafter of the original presentence report that he had committed numerous armed robberies, that he had stolen cars for the purpose of joy riding, and that he had stolen several guns. He further admitted that since the age of fourteen he has had a fascination with guns. **the Defendant stated that he and the individuals he was with on the night of this murder had stolen the sawed-off shotgun that was used to murder Mr. Swpitkowski. WHERE IS PRESENTENCE REPORT? IS THERE A TAPE OF DEFENDANT'S STATEMENTS OR NOTES FROM the author of the report.**

ADULT RECORD

1. July 31, 1976: Defendant was arrested and charged with the crimes of Assault with Intent to rob While Being Armed and Assault With Intent to Murder for shooting and trying to rob Mr. Cassabon. A jury convicted the Defendant of Assault With the Intent to Rob While Being Armed and Assault with Intent to Commit great Bodily Harm on November 22, 1977. Judge Joseph Maher sentenced the Defendant to forty to sixty years on his Assault with Intent to Rob While Armed conviction and six and two-thirds to ten years on his Assault with Intent to Commit Great Bodily Harm Conviction. **These sentences were discharged on September 11, 2011**

July 31, 1976; The instant offense.

3. September 27, 2004: Defendant was charged with Assault with a dangerous Weapon in Branch county for stabbing a fellow has been arrested for his involvement in three prior robberies, and he had plead guilty to one of the robberies as part of a plea deal. In 1977, the Defendant boasted to the author of the Presentence Report that he had committed many armed robberies and had stolen the guns that were used in those armed robberies. the Defendant also had two prior contacts with the juvenile court in connection with the possession of stolen property. Further, Defendant was expelled from Denby High School because he had a locker full of stolen property. Based on Defendant's prior contacts with the juvenile court system his expulsion from Denby High School, and his involvement in numerous other armed robberies, the Defendant fully appreciated the risks and consequences associated with his attempted robbery and murder of Gerald swpitkowski.

On the night of the murder, the Defendant initially suggested that the group of young men commit a robbery. Defendant possessed the firearm to be used in the commission of the robbery. Defendant stole the initial car used on the night of this murder. Defendant gave the order to stop so that he could rob Mr. Cassabon. the Defendant exited the car and approached Mr. Cassabon. He demanded money from Mr. Cassabon. When Mr. cassabon did not turn over his property fast enough, the Defendant shot Mr. Cassabon with a sawed-off 12 gauge shot gun. Less than a half-hour later when the Defendant saw Mr. Swpitkowski walking on Harper, he told Mr. Mulligan to slow down. When Mr. Mulligan slowed down next to Mr. Swpitkowski, the Defendant demanded Mr. Swpitkowski's property. As Mr. Swpitkowski reached for his right back picket, the Defendant shot him in the face, blowing a four inch hole in Mr. Swpitkowski's head. On this fateful night, the Defenant's actions were neither immature, impetuous, nor impulsive. To the contrary, Defendant's actions were methodical, goal oriented and vicious.

The evidence adduced regarding this horrific murder and this vicious Defendant does not support a finding that his crime exhibited the hallmark features of youth--immaturity, impetuosity, and failure to appreciate risks and consequences. to the contrary the facts presented demonstrate that the Defendant was a violent young man and that the murder of Gerald Swpitkowski was thought out ahead of time. The Defendant fully appreciated the consequences

of his actions. Thus, in this case, the defendant's chronological age and its hallmark features do not mitigate in favor of a term-of-years sentence.

B. Defendant's Family and Home Environment

the Defendant was the oldest of 5 children. He was raised by his mother and adoptive father. His father was employed by the F.A.A. as a radar salesman. His mother had several different jobs. At the time of this murder, Mrs. Rosie Lewis was employed as a press operator at the Chrysler Mack Avenue Stamping Plant. According to Mrs. Lewis, she did not have any disciplinary problems with the Defendant. However, she admitted that the Defendant engaged in antisocial behavior when he was away from home and **that the Defendant instigated this criminal activity.** Defendant had problems with his adoptive father. these issues were primarily the result of Defendant's refusal to accept fact that he was not the paternal figure in the household. **(and to stepfather's refusal to accept him.)** It is the People's position that the Defendant's family and home environment does not mitigate in favor of a term of years sentence. The Defendant was raised in an intact household where both of his parents were employed. the Defendant's parents cared for him, and he was loved by his mother. The People have seen no evidence that the Defendant came from a dysfunctional family. The Defendant had a good relationship with his siblings. the Defendant's siblings, who were raised in the same environment as the Defendant, did not commit crimes; let alone multiple crimes and murder. The Defendant's family did not abandon him nor did they place him in an environment prone to crime. The People have no evidence that the Defendant's parents abused or neglected him. There is absolutely no evidence that the Defendant had to rely upon a life of crime to either survive or to be accepted the evidence is to the contrary. **The evidence shows that the Defendant was the leader of the criminal gang in his neighborhood. The evidence further demonstrates that the Defendant is the one that suggested that the group commit a robbery on this fateful night and that he directed the other young men and told them what to do. Thus, the Defendant's family and home environment does not mitigate in favor of a term of years sentence.**

C. The Circumstances of the Homicide

The circumstances of this homicide do not mitigate in favor of a term of years sentence. On the night of the murder, the Defendant and three other young men decided to steal cars and to rob someone. The Defendant stole the first car of the evening, and the Defendant was the one that suggested that the group commit the robbery. As these young men were cruising around in the stolen cars, the Defendant told Mr. Mulligan when and where to stop in order to rob Mr. Cassabon. The Defendant approached Mr. Cassabon with the sawed-off shotgun. The Defendant demanded Mr. Cassabon's money. When Mr. Cassabon did not move as quickly as the Defendant wanted, the Defendant shot Mr. Cassabon. While the Defendant assaulted Mr. Cassabon, Mr. Mulligan stood a short distance behind the Defendant, shaking in fear **because of the Defendant's actions.** Later, when they saw Mr. Swpitkowski staggering down Harper, the Defendant told Mr. Mulligan to slow down the Defendant then pointed the sawed-off shotgun at Mr. Swpitkowski and demanded his wallet. When Mr. Swpitkowski reached for his back pocket, the Defendant shot Mr. Swpitkowski in the face, killing him.

inmate. This case was nolle prosequi on or about April 28, 2005.

INSTITUTIONAL HISTORY

During his incarceration, the Defendant committed the following misconducts:

1. 2/27/2013 Fighting Exhibit 11
2. 3/17/2011 Possession of Dangerous contraband (matches)
3. 3/1/10 Theft; Possession of stolen Property (food): exhibit 13
4. 12/9/09 Out of Place; Exhibit 14
5. 11/19/08 Out of Place; Exhibit 15
6. 11/21/08 Out of Place; Exhibit 16
7. 8/19/06 Substance Abuse; Possession of a weapon (possessed marijuana cigarettes and a 9 inch metal shank); Exhibit 17
8. 7/5/05 Out of Place; Exhibit 18
9. 9/27/04 Assault Resulting in Serious Physical Injury, Creating a disturbance, Possession of a Weapon; Exhibit 19
10. 6/24/04 Out of Place; Exhibit 20
11. 6/23/03 Out of Place; Exhibit 21
12. 5/11/03 Out of Place, Disobeying a Direct Order; Exhibit 22

13. 7/8/02 Out of Place; Exhibit 23

Pages 9 through 11 are all misconduct reports.

While incarcerated, the Defendant completed the following programs:

1. 2009 Creative Writing
2. 2008 Career Hospitality and Food Management
3. 2003 Career Scope
4. 1981 Food Service Basic Sanitation Program
5. 1981 Obtained GED

MENTAL HEALTH

In preparation for the Defendant's sentence in 1977, the court ordered that the Defendant be evaluated by the Recorder's Court Psychiatric Clinic. The testing revealed that the Defendant was "functioning within the average intellectual range. The clinical diagnosis offered [was] that of a 'sociopathic personality disturbance/antisocial reaction in an individual who is homicidal.'"

FAMILY

Defendant was born on May 13, 1959 to Rosie Lewis and Curtis Alexander in Tacoma, Washington. At the time of his birth, the Defendant's biological parents were not married. During his childhood, the Defendant had no contact with his biological father. In 1962, the Defendant's mother married Herbert Lewis. Herbert Lewis subsequently adopted the Defendant. Defendant's four siblings were born to the union of Herbert and Rosie Lewis. Marcus, who is four years younger than the Defendant, was born blind. Defendant's sister Wendy is five years younger, his sister Stephanie is 8 years younger, and his brother David is eleven years younger than Defendant. There is no indication that any of Defendant's siblings have had any contact with the criminal justice system.

The Lewises moved to Detroit, Michigan in 1963 when the Defendant was four years old. After moving to Michigan, Herbert Lewis completed his college education. After graduating, Mr. Lewis secured employment with the Federal Aviation Association ("F.A.A.") as a radar salesman. Mrs. Lewis held a variety of jobs during the Defendant's childhood. At the time of this murder, Mrs. Lewis was a press operator at Chrysler's Mack Stamping Plant. During the Defendant's childhood, the family lived on the eastside of Detroit. Approximately four years prior to the murder, the Defendant's family moved to 12631 Kilbourne, Detroit Michigan.

According to the Defendant, he "enjoyed a close relationship with his mother who he feels was in many ways "the only one in (his) corner' over the years... However, the Defendant readily admitted "that he and his father have never gotten along well," Mrs. Lewis indicated that the relationship between the Defendant and his father really deteriorated when the defendant was twelve years old. From the time the Defendant was ten until he was twelve; his father was required to live in St. Louis for work. When his father returned, the Defendant refused to relinquish the role of head of the household. This refusal strained the relationship between the Defendant and his father. Mrs. Lewis also reported that the relationship between the Defendant and his father may also have been strained because he was the only one of the siblings not to have been born from to his father.

Mrs. Lewis further reported that "she never experienced any disciplinary problems with the [D]efendant, although she admits that he has engaged in antisocial behavior when not in the home." Mrs. Lewis expressed her concern because "the other young men the [D]efendant has associated with have informed her that it has been the [D]efendant, not them, who has been responsible for wrongdoings in his neighborhood. Additionally, [Mrs. Lewis reported] that the mother of one of the [D]efendant's associates once informed her that the [D]efendant was making threats against her son's life. (AFTER associate testified against him, sending him to prison for life.)

There was no indication that the Defendant's parents ever abused or neglected him.

For the main part, the defendant attended Detroit Public Schools. Starting in the fifth grade, the Defendant's attendance began to decline. Until the ninth grade, the Defendant earned average or below average grades. He failed the ninth grade at least three times. At the time Defendant shot and killed Mr. Sypitkowski, he was repeating the 9th grade for the fourth time at Finney High School. Defendant was a difficult student. He fought with the other students,

he was disruptive in his classes, and he talked back to his teachers. Defendant was suspended from Denby High because he had stolen property in his locker.

VICTIM IMPACT

In preparation for this resentencing, the People have unsuccessfully attempted to locate any family for the deceased Gerald Sypitkowski.

DISCUSSION OF FACTORS

A. Defendant's Chronological Age and Its Hallmark Features

At the time he committed this heinous offense, Defendant was 17 years, 2 months and 18 days old. He was not as young as the 14 year old defendant in Miller. However, because he was less than 18 years old, he was still a juvenile at the time he viciously murdered Mr. Swpitkowski.

Despite Defendant's legal status as a juvenile, his crimes present us with none of the hallmarks of youth. This crime was not an isolated incident. Prior to this murder (???), the Defendant. Yet in 1987, the Defendant filed suit in Federal Court claiming ineffective assistance of counsel because his counsel, Mr. Arduin, failed to raise an alibi defense at trial. The Federal Court conducted a hearing regarding Defendant's claim of ineffective assistance of counsel. At the hearing, the Defendant testified that he had informed Mr. Arduin about his job playing at a musical engagement on the night of the murder and the existence of alibi witnesses. However, the Defendant testified "that he did not know the names of these witnesses and could not recall anything about them. The [Defendant] also testified that he possessed documentary proof that he played with the band that night, but was unable to produce it at the hearing, and could not even recall its exact nature without prompting from his attorney. After taking testimony from the Defendant, Mr. Arduin and the Defendant's first attorney Mr. Lorence, the Federal court held:

"In light of the [Defendant's] inability to testify with any specificity as to the identities of his alleged witnesses, his uncertainty over the exact nature of his alleged documentary proof, Mr. Arduin's testimony that [Defendant] admitted being in the car at the scene of the murder, and the delay in raising this issue in his numerous appeals, the Court concludes that there were no alibi witnesses. NOT TRUE—that was the one claim the Court upheld....

Despite the Federal Court's conclusive finding that there were no alibi witnesses, the defendant continues to assert an alibi defense and maintains his innocence. Recently, the Defendant has accused Leslie Nathaniel of killing Gerald Swpitkowski. The Defendant now claims that "[t]he murder of Gerald Swpitkowski was a mob hit that was ordered by the same mob bosses that ordered the murder of Jimmy Hoffa. Leslie Nathaniel was a mob hit man." Defendant further claims that Police Commissioner John Nichols ordered Mr. Nathaniel's release "because the mob bosses that ordered the hit on Officer Swpitkowski ordered" him to release Mr Nathaniel. the Defendant makes these claims with absolutely no supporting evidence. Once again Defendant clearly demonstrates his refusal to take ownership of his actions and his inability to be rehabilitated.

Third, the Defendant has demonstrated his lack of rehabilitation by his willingness to rely upon forged court documents and by blatantly misrepresenting facts to the courts. In the 2000's the Defendant forged an order, supposedly issued by Judge Drain, dismissing the Defendant's First Degree Murder conviction. Prior to January, 2012, Defendant filed an application for Satisfaction of Judgment and Order to Show Cause Diana Judge in an effort to obtain his release from prison. Judge Drain heard and denied the Defendant's application. In his order Judge Drain stated "the signature on the order submitted by Mr. Lewis is a forgery." Despite Judge Drain's order declaring the 2001 order a forgery, the Defendant continues to rely upon it in attempts to gain his release from prison. Judge Drain did not sign this 2012 order.

On February 11, 2016, four years after Judge Drain declared the order a forgery, the Defendant filed in the United States District Court for the Eastern District of Michigan a Motion for Relief from Judgment Pursuant to Rule 60(b) for Void Judgment. In his Motion, the Defendant states that "[t]he Honorable Gershwin A. Drain Dismissed the conviction on April 3, 2000." Defendant made this statement to a Federal court knowing that it was a lie. Defendant's misstatements and outright lies to various courts are further evidence that he has not and cannot be rehabilitated.

>Fourth, the Defendant persists in affiliating himself with his gang. In 1976, the Defendant and the other young men involved in this murder belonged to a neighborhood gang called the Kilbourne Killers, KK for short. In 1977, Defendant told the drafter of his original presentence report that he and other members of the gang thought of him as the gang leader. Forty-two years later, the Defendant still uses the gang's moniker, KK, as his nick name.

Defendant's continued use of the gang's moniker further evidences his inability to be reformed. The evidence proves that Defendant has not begun the process of rehabilitation. The Defendant's prison record provides evidence that the Defendant still does not follow the rules. The record also shows that defendant is still assaultive. The Defendant forges court documents and lies to the courts in an attempt to gain release from prison. Further, the Defendant's refusal to accept responsibility for his actions demonstrates that he has not even begun the process of rehabilitation. Thus, the Defendant's lack of rehabilitation would support the imposition of a life without parole sentence.

CONCLUSION

After careful and through consideration of all the sentencing factors delineated in Miller, the People submit that a sentence of life without parole is appropriate for this Defendant and the crime he committed. Defendant was 17 years, 2 months and 18 days old at the time he brutally murdered Gerald Swpitkowski. Defendant was approximately 9 months shy of his 18th birthday. Prior to this vicious murder, the defendant had multiple contacts with the juvenile court system. (Not on record—cases dismissed.) Shortly before he murdered Mr. Swpitkowski, the Defendant had plead guilty to robbery and was awaiting sentence by the juvenile court dismissed later. Defendant was raised in a stable two-parent home, not a brutal or dysfunctional family. On the date of the murder, the Defendant was the leader of the group of young men that committed this crime. Defendant told the other young men what to do, and the Defendant fired the fatal shot. (Proof)

Defendant's actions over the last forty-two (42) years have demonstrated that he has not and cannot be rehabilitated. He refuses to follow prison rules. In 2004, when the Defendant was forty-five years old, he stabbed a fellow inmate with a prison made knife. The Defendant's actions over the last forty-two (42) years have demonstrated that he has not and cannot be rehabilitated. He refuses to follow prison rules. In 2004, when the Defendant was forty-five years old, he stabbed a fellow inmate with a prison made knife. the Defendant has attempted on numerous occasions to defraud multiple courts in an effort to gain his release from prison. Further, the Defendant refuses to take ownership for his actions that resulted in the violent death of Gerald Swpitkowski. An individualized examination of this Defendant and his criminal conduct supports a finding that the Defendant should be re-sentenced to life without parole for the murder of Gerald Swpitkowski. What individual? Where are psychologist and Stapleton reports? WHEREFORE, the People respectfully request that this Honorable court grant their motion to re-sentence the Defendant to life in prison without parole. _____

>This was the last page of the brief submitted by Dawson. There are of course some portions of it that I will have to go over with Schulman. What he said about the circumstances of the homicide opens the door for us to raise everything that we raised in previous motions. How does this relate to you. The portions of the brief where he refers to me as a current gang leader because my nickname is KK is what you will likely be called to testify about..